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### **Chapter 3 - MANAGEMENT**

Community associations have specific and legally obligated responsibilities and duties; e.g., physical maintenance, financial record keeping, covenant enforcement, and general administration. The scope of these responsibilities, available resources, and the needs and involvement of association members will determine how well they are accomplished. This chapter describes types and styles of management used by associations to fulfill their responsibilities; it discusses aspects of property management such as facility improvements, contracting procedures, and “people management” concerns such as rules enforcement, complaint resolution, pets, parking, and absentee owners.

Management can be defined as the process by which the available material and human resources are most effectively used to achieve the purpose of the organization. The purpose of property owners’ and condominium unit owners’ associations is to maintain the common areas and facilities of the development and to protect property and community values. The material resources available to achieve these objectives are the assessments paid by the unit and property owners; the human resources are the volunteer efforts of the directors, committee members, and residents. It is the responsibility of the directors to use and manage these resources as effectively as possible to achieve the purpose of the association.

The board of directors must examine the association’s documents to identify all of the association’s responsibilities. In addition to the obvious lawn mowing and the upkeep of recreational facilities, they will also include the business functions of record keeping, contracting and correspondence; the fiscal functions of assessment collection, budget preparation and bill paying; and the administrative functions of complaint handling, covenant and rule enforcement, and communications. After identifying the functions to be performed, the Board must decide how they are to be done, by whom, and what funds will need to be allocated. To assure that no task is overlooked and to permit the allocation of the workload fairly among its volunteers, employees and contractors, a list of individual tasks can be developed and each task assigned to a specific individual, contractor or committee. This process will result in a management plan for the association and will determine the type of management the association utilizes. It should be noted that the documents of some associations, frequently those of apartment-style condominiums, require that a professional management firm or professional manager be employed to manage the project. Most associations, however, are free to choose the type of management arrangement they wish.

#### **Types of Association Management:**

There are three basic management arrangements utilized by most homeowners’ and condominium unit owners’ associations and depending on physical and membership size, available budget, scope of association responsibilities, interest or apathy of association members. The type of management used by an association depends upon many factors, including physical characteristics of the community (the number of units, type of housing, extent of recreational facilities), the desires of the residents, and the financial position of the association. A 125-unit townhouse complex, for instance, may use professional management if the majority of owners

are absentee investors not involved in the day-to-day operation of the community. Self-management might be used if the owners are young families who have the desire and energy to volunteer their services but are concerned about keeping the assessment as low as possible. Regardless of the type of management used, it is imperative that the association informs the residents of the exact responsibilities of its maintenance and management personnel and keeps them apprised of any changes in staffing, procedures or the management's responsibilities. The primary types of association management are:

Self Management - In a self-managed community, the board establishes the policies and procedures to be followed in the operation of the community and supervises the persons who carry them out. Self-managed associations are typically small, have limited facilities, and provide limited services. The success of volunteer self-management depends on the residents themselves and requires dedication, teamwork, and expertise in performing the tasks associated with association operations. This type of management has the advantages of saving money, retaining association control over the tasks performed, and promoting member involvement in the community. The primary disadvantage is that volunteer self-management requires a significant commitment of time and effort. If the burden becomes too much, a volunteer may quit. Sometimes the loss of one or two volunteers with essential skills can cause a volunteer system to fail. In addition, mistakes made through inexperience or lack of expertise, such as improper lawn care or inadequate financial record keeping to substantiate assessment liens, etc., can negate any savings. A volunteer self-management association should seriously consider the breadth and amount of directors' and officers' liability insurance.

Not all self-managed communities depend exclusively on volunteers. Some hire individual employees or contract with one or more firms to perform maintenance or administrative chores when the association does not have the time or expertise. An association may hire a part-time bookkeeper or secretary to handle normal office tasks and contract for ground care and snow removal services. Occasionally, an association pays its secretary and/or treasurer to perform billing, check and letter writing chores. The direct hiring of employees or contractors maintains association control of the services to be provided, consequently the association becomes involved in personnel matters and contracting procedures, which can be time consuming. Employing personnel requires the preparation of job descriptions, scopes of work, and task lists; the completion of the forms for workers' compensation, unemployment compensation, income taxes and social security withholding; and the supervision of employees. Contracting involves the development of specifications, bid evaluation, contract negotiation, and monitoring of the contractor's performance. The costs and benefits of employing staff should be carefully evaluated to make certain an association is receiving the best value for its money.

Some associations employ resident children on a part time basis during holidays or summer. Such employment for mowing, light maintenance, life guard at the pool, clerical work in the office, etc. must comply with the Virginia Child Labor Laws which, with few exceptions, require each 14 or 15 year old to have an employment certificate (work permit) to be legally employed. The association is responsible to verify that a child of 14 or 15 has a valid work permit. Children under 14 are not legally eligible for

employment. Work permit applications are available at most schools. Contact the Northern Virginia Office of the Division of Labor Law Administration, Virginia Department of Labor and Industry at (703) 691-0178 or online at [www.dli.state.va.us](http://www.dli.state.va.us). It is important to note that liability insurance generally costs more for self-managed associations than for those which contract with an experienced company for management services, particularly where a swimming pool is concerned. A self-managed association should consider a professional pool management and service company to provide trained and insured lifeguards.

Hired Management – Some associations employ individual(s) to manage the day-to-day operation of the community. Usually, an association large enough to need (and afford) a full-time manager will require other personnel to assist the manager with secretarial tasks, bookkeeping, and routine maintenance. Associations that hire a manager often maintain a manager's office in the community. The presence of on-site staff enables residents to contact management when problems or emergencies arise and helps maintain a consistent level of maintenance and other services.

Hired management requires that the board spend time formulating job descriptions, determining salaries and handling other personnel matters. However, it also permits the association to hire an individual whose background and expertise fit the community's particular needs. Some associations find this preferable to hiring a management firm whose staff is not directly responsible to the board and may not have the specific qualifications desired. The board will still be involved in contracting for services that the manager and staff cannot perform (i.e., trash collection, exterior painting, rebuilding, and decorating), but much of the contract preparation and subsequent monitoring of the contractor's performance can be delegated to the hired manager. It can be difficult to find a qualified manager who has the necessary skills and experience to manage an association and the temperament to work well with the board and residents. A disadvantage of hired management is the problem of providing for a substitute when the manager is absent from the community due to sickness or vacation. Additionally, when a manager leaves the association's employment, the board must take over until another manager is found and trained. While this situation is never easy to handle, written maintenance procedures and a good record keeping system can help the board avoid major problems.

Contracted Management - Contracted management normally refers to the employment of a company that specializes in all aspects of professionally trained community association management and operation. Many management firms, however, also offer consulting services, that can be contracted for on an individual basis. This permits an association to obtain limited management services according to its needs and resources. Contract management of an association provides the staff, support resources, and equipment necessary to perform all the services required by the association. The cost of contracted management is generally based on the scope of services required and the time and resources needed to manage the community. An experienced management firm can reduce waste and inefficiency and save money by instituting procedures that enable the association to run more efficiently, obtaining supplies and services at a savings, and "plugging" the association into its established management and financial systems. An association which contracts for all of its management needs could become too dependent

upon the firm for information about its finances and general conditions. The board remains legally responsible to be certain that all association business matters are attended to promptly. Generally, contracted professional management companies offer the following services:

- attend board and membership meetings; receive, record and resolve complaints according to policies established by the board of directors;
- handle personnel matters of the management staff, including hiring, supervising, paying staff, and filing necessary reports and forms;
- maintain an inventory of association property and equipment; and provide regular inspections to determine conditions and maintenance needs;
- collect assessments, bill owners, delinquency follow-up and notification to the board of directors; send violation notices to residents;
- maintain association books and records and prepare financial statements when required; disburse funds for normal and recurring expenses and make other expenditures as directed by the board;
- prepare a proposed operating budget; contract for utilities and other services; purchase equipment and supplies; and maintain the common areas and facilities;
- obtain and maintain insurance information and making recommendations to the board of directors; and report insurance claims.

It is important for the management firm to know all limitations stated in the association's documents. When evaluating management firms, the following factors should be considered:

- Experience – The firm should be familiar with the concept of homeowner or condominium association management. Determine how long the firm has been working with associations, how many associations similar to yours it currently manages, and how many units this includes. Make sure the firm's personnel are knowledgeable about the Virginia Property Owners Association Act, and the Virginia Condominium Act;
- Services – Determine whether the firm offers the services your association needs. If any services are subcontracted (grounds and pool maintenance, accounting, etc.), discuss the expected standard of maintenance;
- Reputation – Ask for and check references about the firm's past performance with associations similar to yours. Investigate through professional associations, the police, the Better Business Bureau, and state and local consumer affairs agencies whether a company, or officer thereof, has ever been convicted of a crime, and whether the company's insurance bond has ever paid for dishonesty, act of

negligence, or other inappropriate or criminal action. Investigate any consumer complaints filed against a company, including how the complaint was resolved;

- Professional Affiliation – Check to see if the firm belongs to one or more professional property management organizations such as the Community Associations Institute, the Property Management Association, or the Institute of Real Estate Management;
- Procedures and Systems – Ask the firm to describe the accounting system that will be used, the collection of delinquent assessments, maintenance schedules, purchasing and billing procedures. Determine if they are compatible with the association's policy and procedures;
- Personnel – Determine the number of persons to work with your community, what training they have had, how long they have been with the firm, and that the staff is bonded;
- Accessibility – How does the firm handle after-hours emergencies?
- Financial Stability – Check the firm's credit rating, insurance and bank references, and check with vendors and suppliers to learn how promptly the firm pays its bills;
- Compensation – Determine how the management fee is computed. Is the fee based on a package of services, extra charges, and separate charge for each service? Does the fee include attendance at board of director meetings and other after-hours obligations?

The information on contracting procedures in this manual, and the following publications should be helpful when contracting for management services:

- Association Management, Community Associations Institute, GAP Report #1, Community Associations Institute, 1998.
- Choosing a Management Company, Community Associations Institute, GAP Report #8, Community Associations Institute, 1998.

### **Maintenance Management:**

Each homeowner community has unique maintenance requirements. A community's design, location, and size as well as the type and quality of the building materials, construction techniques employed, and recreational facilities provided will have a profound effect on the maintenance needs and costs. While most associations have had no control over these factors, they must develop a program to maintain the common areas and facilities in good and safe condition. The degree of actual involvement in maintenance and maintenance planning by an association's board of directors and members will depend on the type of management the

association chooses. A maintenance plan generally includes the procedures used to handle maintenance requests and maintenance emergencies as well as a schedule for routine maintenance and anticipated major repairs. A good routine maintenance program helps to minimize major problems, extends the useful life of the equipment or facility, permits the board to determine who will perform the work and when, and keeps the community well maintained.

The board should make a list of all the routine maintenance tasks necessary for the grounds, facilities and equipment in the community. While the scheduling of housekeeping chores for lobbies, hallways and stairwells, and routine chores such as lawn care and snow removal is obvious, maintenance and servicing for mechanical equipment should be based on manufacturer's recommendations. A maintenance program should also include periodic inspections to make sure the scheduled maintenance is being performed, and that any conditions needing attention are taken care of. When determining the level of maintenance and the priority of each maintenance task, the association must first consider its responsibility to protect the health and safety of the residents and comply with requirements of the association's documents. In addition, it must consider the costs and benefits involved, as well as resident desires. Some maintenance tasks can be deferred, but this can result in greater costs. The "Operations and Finance" section of this manual discusses maintenance considerations for various facilities and services common to owners' associations. Community associations of all types regularly evaluate their maintenance program and verify that the following routine repairs are properly performed:

- Service Vendor File – lists services available from each vendor, including a contact name and phone number, the vendor's business address, availability of 24-hour emergency service, and service call rates;
- Facility File – contains a record of the maintenance history, complaints, and inspection reports for each recreational or other community facility;
- Equipment File – contains the purchase order, owner's manual(s), manufacturer's equipment maintenance recommendations, a copy of the product warranty, maintenance history, (this file can also be used as the inventory file). If an association is responsible for elevators or boilers, the file should hold the elevator inspection certificate and state boiler safety certification; and,
- Unit File – contains a record of any maintenance or repairs performed by the association on any individual dwelling.

### **Risk Management:**<sup>14</sup>

Accidents happen for a multitude of reasons and causes. Community associations must carry property damage, liability and other insurance to protect against major loss resulting from accidents and injuries on association common property. Although not a technical legal term, (and different circumstances generate different definitions), an "accident" generally connotes:

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<sup>14</sup> Kenneth Budd, "It's No Accident", Common Ground, Vol. XI, No.4, copyright by Community Associations Institute, July/August 1995, pp. 10-14. Modified for this publication with permission of the author.

*“An unfortunate event resulting especially from carelessness or ignorance; causing loss or injury which is not due to any fault or misconduct on the part of the person injured but for which legal relief may be sought.”<sup>15</sup>*

Awareness, education, and development of a risk management program can prevent many accidents. Risk management means identifying areas of potential risk (i.e., the degree or probability of hazard), and preventing “accidents waiting to happen” by taking steps to remove or reduce the risks. Similar in concept to that of defensive driving, risk management is aggressive awareness and positive action to minimize or eliminate the opportunity for accidents. Risk management will not prevent every accident or eliminate every vengeful lawsuit, but it can reduce and minimize the chance, frequency, and severity of accidents and tragedies before they happen.

The purpose of risk management is prevention; first to prevent personal injury and possible tragedy, and second, to prevent major or catastrophic financial loss to the association. The first step is to identify and list all possible risks and causes of accidents and personal injury on association facilities and common property, including passive “buffer zones,” “open spaces” and “fringe areas.” Particular attention should be directed to the pool, roadways, and play areas, where the activities and typical careless abandon of children at play can be anticipated. The best way to accomplish this is by conducting an annual “walk through” inspection of the entire development with the association’s insurance carrier, the board of directors, the association’s property manager, and the maintenance manager or foreman. Depending upon the size of the association, the type and quantity of facilities, and the amount of common grounds, an association may even appoint a Risk Management Chairman or committee, who should also take part in the annual Inspection. The property manager, risk management chairman/committee, and members of the board should supplement this major review with monthly or weekly walk-through inspections.

Annual and monthly property inspection to eliminate risks will help to reduce accidents and injuries and protect the association from liability claims. An association should have a formal risk management program headed by one of the directors or responsible member(s) appointed by the directors. Any risk management program should identify risks, measure their impact on the association, prioritize the risks according to severity, chose the best solutions for eliminating those risks, and monitor the results. The program should list the association’s insurance policies and contacts for reporting an accident/injury claim; it should record all risk management decisions and changes to the program policy; and document the association’s reasons for the changes. The association should develop a written risk management policy to:

- establish risk management goals and objectives;
- define duties;
- coordinate treatment of exposures to loss;
- establish communications channels;
- get the community involved; and,

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<sup>15</sup> Webster, A Merriam-, Webster's Collegiate Dictionary, pub. by Merriam-Webster Inc., Springfield, latest online edition at [YourDictionary.com](http://YourDictionary.com)



- provide for program continuity during personnel and board changes.

Because a formal risk management program benefits all association members by reducing the potential for accident/injury, and by reducing or stabilizing the cost of insurance premiums, the association should get all of the residents involved as well. The association can publicize the risk management program in its newsletter or bulletin and ask residents to respond by pointing out situations, conditions, and possible hazards that should be attended to. In exchange, the association can pass on tips from its insurer or risk management professional to help safeguard residents from accident and injury on their own private property within the community. To encourage reporting and feedback from the whole community, the association might sponsor a monthly contest and offer a token cash award, partial reduction in the monthly assessment, or other incentive, (i.e., free entrance to the next association-sponsored function, or reserved priority parking space at the pool/clubhouse for a period of time), etc. If an association wants the best possible insurance coverage and premium rates, a risk management program is essential. “The more the association can do to keep a community safe and free of liability, the more it can do to lower insurance rates,”<sup>16</sup> and to prevent tragedies, before they happen.

Risk/hazard identification does not require a high degree of technical knowledge or equipment, or repeated case histories of accident and injury, but rather the application of plain common sense and awareness. The absence of accident or injury reports does not necessarily mean that the community is hazard free. Visible hazards such as pot holes, broken or uneven walks, rotted trees, broken limbs, play equipment in disrepair, sharp projections, loose handrails, etc. should be written on an inventory list and fixed or removed promptly. Other hazards are less obvious, such as obscured visibility at intersections, lack of warning signs or barriers/fences, insufficient or malfunctioning lighting or safety devices, and even routine but unprotected maintenance operations. In preparation for an annual maintenance inspection, the association can obtain risk identification inspection lists from its insurance carrier or commercial risk management expert. The Project Inventory Worksheets at the end of this chapter can be used to start a comprehensive inventory of association grounds and facilities for an annual risk assessment inspection. Some subjects that can be of particular risk management concern for community associations are:

Swimming pools – are one of the greatest risks facing community associations. Swimmers can easily fall on the deck or hit the bottom of a pool. Most insurance companies view diving boards as an unacceptable risk. The Colorado Supreme Court ruled that an association has a “common-law duty of care” to keep common areas in good condition, including the pool.<sup>17</sup> Another Colorado appeals court ruled in favor of the association, stating that the association would be responsible for the injury only if it was proven to be negligent.<sup>18</sup> Swimming pools are perhaps most attractive when they are closed and no supervision is present; and many accidents (and resulting lawsuits) have happened under these conditions. Security of the pool area to prevent unauthorized use, vandalism, “kid stuff,” and pranks is critically important in reducing risk and liability. A durable security fence with heavy duty locks at all gates and the bath house, security

<sup>16</sup> John Manougian, Manougian Ins. Agency, Silver Spring, Md.

<sup>17</sup> *Acierno v. Trailside Townhome Association*, Colorado Supreme Court, September, 1994.

<sup>18</sup> *The Plantation at Lenox Unit Owners' Association v. Lee*, Colorado Appeals Court, 1990.

lighting of the whole pool area, and even a security alarm with motion detectors can discourage unauthorized use and thereby provide a significant risk prevention and safety factor. Most local governments enforce swimming pool ordinances to assure health and safety considerations for all users. Associations can reduce the risk of negligence at a pool in the following ways:

- lock and enclose the pool area at all times when a trained staff member is not present; provide security lighting and an alarm with motion sensors;
- accurately identify, mark and maintain water depths;
- install handrails for entering and exiting the water;
- change the texture or color of the pool wall at the water line to aid visibility and identification by swimmers;
- separate the shallow and deep ends of the pool with visible, floating buoys;
- remove trash and debris on a regular basis;
- install a textured, slip-resistant surface around the pool to reduce slip and fall type accidents;
- promptly repair all deteriorations such as cracked concrete, broken fence or gate(s), etc.;
- develop and enforce pool rules, and follow local ordinances;
- keep a first-aid kit and life preserver nearby;
- regularly check chemical levels of the pool water to ensure that they are within required tolerances; and,
- lock up all cleaning equipment, supplies and chemicals.

Recreational Facilities, Amenities and Events – Exercise rooms have the greatest potential for accidents with personal injury. An association having such facilities should post signs advising that all users of exercise equipment do so at their own risk, and to see a doctor before using the equipment. A phone, limited to 911 calls only, can be installed for use in medical emergencies. Other facilities such as a gymnasium, clubhouse, tennis or multi-purpose court should be cleaned and maintained regularly with repair and/or replacement of any broken or damaged equipment or accessories. Pre-registration and/or supervision can assure proper use of indoor facilities by the management staff. Limitations and rules for use should be clearly posted within the facility. Hours of operation and written limitations and rules for use can also be distributed to eligible community members annually or semi-annually. Association-sponsored athletic events can create risks as well as enjoyment, and many associations require participants to sign a

release form to indemnify the association in case of an accident or injury. However, a court may ignore a release form if there are signs of gross negligence, as a Virginia court ruled in 1992.<sup>19</sup>

Sidewalks and floors – Slip and fall accidents are common, and are usually preventable. Downspouts can direct water onto sidewalks that can freeze in winter weather. Leaking or puddled water in lobbies, laundry or other common rooms, and oil puddles in parking lots can be hazardous. Other facilities and locations such as steps and ramps should have a sturdy, secure handrail for added support and stability against imbalance and tripping or falling, particularly where senior citizens may congregate.

Employees – According to Community Association Institute GAP Report #25 – “Community Association Risk Management”, employee safety programs are the most important loss prevention techniques for reducing the number of on site work injuries. This is particularly true for associations who employ their own grounds and facility maintenance staff, and who are required to pay for workman’s compensation insurance. For associations that contract management, maintenance and/or operational services, employees’ accident and injury insurance is usually required in the contract to be provided by the professional service company (employer). In either case, a professionally taught, on-site employee safety program covering the handling of equipment, supplies, chemicals, and work procedures can be very beneficial for a community association’s protection and risk management.

Fires – One of the best risk management tools is a posted fire evacuation plan, particularly for multiple family dwelling structures such as garden-style and high-rise condominiums. A fire evacuation plan for such structures is usually required by either County ordinance or state law. Most fire departments can assist an association in developing an evacuation plan. Smoke detectors, fire extinguishers, and sprinkler systems are also effective risk management tools, and are usually required by fire codes for all places of public gathering.

Contractors – Managing an association’s contracts is a key part of risk management. Any contractor who lacks adequate insurance can trap an association if there is an accident. It is, therefore, essential to ensure that the contractor is properly and adequately insured and protected, and that this requirement, with dollar amounts of coverage, be clearly identified and written into the contract. Contracting procedures (chapter 5) should include having the association’s insurance carrier and attorney review the proposed contract document(s) for sufficient type and amount of insurance to be provided by the contractor. Unless the contract is properly written, the association is likely to be charged if a contractor or his employees are injured on association property. An association should always require a copy of the contractor’s insurance certificates and appropriate licenses and contact the issuing authority to ensure that they are current and A-rated. Associations should also require contractors to have specialized liability insurance

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<sup>19</sup> *Hiatt v. Lake Barcroft Community Association*, Fairfax, Virginia, Virginia Supreme Court, 1992.

covering the proposed work, i.e., pollution liability coverage if chemicals are to be used, vehicle liability covering needed vehicles, and workers' liability. The best way to know that these coverages are in place is to call the contractor's insurer.

### **“People” Management:**

Living in a community with shared facilities requires that all members cooperate with their neighbors to create and maintain an enjoyable living environment. Human nature being what it is, this living environment is usually achieved by the development and enforcement of rules and regulations that inform all members of the limitations and expectations placed on their personal activities. Association rules and regulations generally govern the following:

- implement the architectural controls and other use restrictions (i.e., noise, trash, storage, parking, etc.) outlined in the Covenants;
- outline the procedures to be followed by residents when dealing with the association (i.e., when, where, and to whom, etc.);
- regulate the conduct of residents and guests when using the common facilities.

An association's governing documents typically give the board of directors the authority to issue, rescind and amend an association's rules and regulations. This authority flows from the responsibilities of the association to protect the health, safety, and welfare of the residents; to maintain the common areas; and to protect the property values in the community. The documents of some associations specifically state that the board of directors has the authority to adopt and enforce rules concerning facility use and the personal conduct of members and their guests when using the common properties. Other association documents merely include a provision that requires the board to exercise all reasonable authority vested in the association. The Property Owners' Association Act and the Condominium Act expressly provide such authority to boards, except where the documents reserve the power to the members. The Acts also provide that the members may repeal or amend any rule or regulation by a majority of votes cast, in person or by proxy at a meeting convened in accordance with the provisions of the association's bylaws and called for that purpose.

Rule Adoption - The overall size of the community, the kind of dwelling units, and the number and type of recreational facilities for which the association is responsible will affect the number and type of rules. Association rules usually relate to the enforcement of the architectural controls, restricting specific actions on common and private property, and collection of assessments. An association with many recreational facilities may find that more comprehensive rules are necessary to protect all members' rights and to minimize the association's liability risk. Each rule increases the management burden and should have a specific purpose, whether to prevent an unwanted situation, resolve a reoccurring problem, control behavior, or simplify management of a facility. When a new rule is proposed to address one of these conditions, the board of directors should be certain that:

- the proposed rule addresses an identified problem, and all reasonable alternatives to adopting a new rule have been made (e.g., trash baskets may eliminate littering);
- the proposed rule is consistent with the association's documents. The authority to adopt a rule must be based on the powers specifically given to the association in the documents, and related to the association's duties and responsibilities (e.g., protecting the association from liability or accidents, etc.);
- the rule is clearly worded, easily understood and stated in a positive manner. Stating what is permitted rather than what is prohibited can be effective in obtaining compliance, e.g., "Dog walking is permitted in the following areas..." or "Ball playing is permitted only...";
- the rule must be fair, apply to all residents equally and be consistently and equitably enforced. Penalties should be appropriate to the infraction and offender. An association must be careful when enacting penalties for rule violations. Some documents permit the suspension of a member's voting rights and rights to use the recreational facilities for failure to pay the assessment; other documents permit the levy of monetary charges for infractions of the rules and regulations. Check with its attorney prior to enforcing penalties for rule violations; and,
- the rule must be reasonable and enforceable, (e.g., noise from a play area cannot be eliminated, but it can be controlled by scheduling hours of use, supervision, etc.).

The board of directors should publicize a proposed rule via the newsletter, mailed notices, and/or bulletin boards to involve residents in its rule-making procedure, and ask for written comments or schedule a hearing for membership discussion of the rule prior to enactment. This process allows modification of the rule before enactment, gives the board an opportunity to explain the reasons for the rule, and helps to increase understanding and compliance when it becomes effective. Most importantly, it fulfills the need for due process that is required by state law and enhances the enforceability of the rule in the eyes of a court if the rule is challenged.<sup>20</sup> When publicizing a new rule or set of rules, the board of directors should clarify to whom the rule applies, when does the rule become effective, what is the reason for the rule, and what benefits will be derived from it?

It is also important to clarify what is the authority for enacting the rule ("...in conformance with Article VII of the Bylaws, the board of directors has resolved..."), and who will enforce the rule (the architectural control committee, the board of directors, the management agent, the lifeguard on duty, etc.). Once adopted, a rule should be published in its final form in the newsletter or a copy should be mailed to each resident. If appropriate, it should be permanently displayed at the facility to which it applies, e.g.,

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<sup>20</sup> F. Scott Jackson and David Baratti, Strategies for Successful Enforcement of Rules and Deed Restrictions, CAI Research Foundation, Monograph Series, Vol. 1, No. 1, Alexandria, VA, 1978, p. 6.

pool, tennis court, party room, etc. Many associations periodically publish a handbook that includes updated rules as well as pertinent information concerning the community.

Rule Enforcement - Rule enforcement is often contentious and difficult, but it is essential that infractions be dealt with promptly and uniformly, using an adopted and published rule enforcement procedure. The procedures necessary to enforce a rule vary depending on the rule violated and severity and/or frequency of the violation, but generally a board member(s) should approach the violator to informally discuss the problem. Very often quiet discussion of the problem results in correction of the condition and compliance with the rule. If informal procedures do not work, the association should initiate formal notification and enforcement procedures. The Property Owners' Association Act and the Condominium Act require that a formal written violation notice be hand delivered (and signed for) or mailed to the offending property owner by certified or registered mail, return receipt requested. The notice must include:

- a statement of the violation or infraction, identifying and quoting the specific covenant, condition, restriction, rule or regulation of the association, and clearly referencing the association's authority for enforcement;
- the potential penalty for failure to comply with the rule or to correct the condition;
- what must be done to correct the violation, and providing a reasonable and acceptable time period for compliance.

The written notice must also state that the owner has a right to present his side of the problem at a formal hearing and that he/she/they may be represented by counsel (at the offender's choice and expense). Charges for a tenant's violations must be assessed against the property owner/landlord and not the tenant. It is the owner's responsibility to provide the rules and regulations to a tenant, and to secure reimbursement for any charges levied for rules violations. The association may set the hearing date or just provide a time limit for the offender to request a hearing, giving an acceptable date, and to notify the board of intent to be represented by counsel. Such hearings are usually held before the board of directors, the Covenants Committee, the Architectural Review Committee, or other tribunal designated in the governing documents. Such violation hearings are one of the few explicit reasons permitted by law for a closed executive meeting to protect the privacy and integrity of the individual member involved.

The hearing should be conducted as an impartial fact-finding opportunity to reveal relevant circumstances surrounding the situation, including the severity and frequency of the alleged violation, and the member's misunderstanding, attitude, inability or refusal to comply. Although the association's covenants and rules, etc. are to apply uniformly to all members, the board should consider that members of foreign cultures may not understand the governing authority of the association in relation to the ownership of private property. Further, the board must always remember that the purpose of the enforcement procedure is to gain compliance with the covenants, conditions, restrictions, rules and regulations rather than to collect extra funds, to penalize members, or to exert its authority as a power play. Within a reasonable time period following the hearing, the board should discuss all information presented at the hearing and vote upon

whether to accept the member's reasons for non-compliance. The Board can, with reason, decide to waive or enforce application of the rule, accept a delayed compliance schedule, begin to assess financial charges (against the property), suspend the member's use of facilities and services, or apply other penalties for the violation as allowed by law and the governing documents. For both condominium and property owner associations, the results of the hearing must be delivered in writing within seven (7) days to the member by hand delivery or by registered/certified mail.

Financial charges and penalties for covenant and rules etc. violations are applicable only as of the date of the board's or committee's final vote and not retroactive to the date of the initial violation notice. Financial charges for rules violation are treated as an assessment against the offender's property for the purpose of recording and for suspending a member's right to use facilities and/or non-essential services. However, such assessments must be unpaid for more than 60 days before either provision of the Acts can be implemented. If there is still no compliance by the offender within a specified time, a letter from the association's attorney can outline other legal steps that may be taken to obtain compliance. Under the Property Owners' Association (POA) Act, the rules and regulation may be enforced by any method normally available to owners of private property in Virginia. This includes, but is not limited to, application in court for injunctive relief and/or damages, during which the court may also award legal costs and reasonable attorney's fees to the prevailing party in such proceeding.

Complaints and Resident Disputes - When people must abide by rules and regulations for the general good of the community, complaints will be received from residents about wrongful actions or inaction of others, and of the association itself. Most disputes arise from simple misunderstanding, ignorance of requirements, and/or lack of information and can be settled quickly and amicably by discussion. Other disputes and problems may involve legitimate interpretive conflicts of association rules and governing documents or applications thereof, while still others involve personality or behavior conflicts rather than a violation of rules or covenants.

An association and/or its attorney should review its Covenants, rules and regulations, and other governing documents to verify that a dispute involves a legitimate violation. If a situation can be resolved by communicating directly with the other party, the association may not have to resort to judicial means of resolution. Therefore, the board should develop a due process procedural system for handling complaints and disputes (Legal Assistance, Chapter 6). For many residential community situations there has been an increase in the use of alternative dispute resolution (ADR) in resolving association disputes. ADR is not appropriate in every case, but when suitable, it can be a more positive (and less costly) experience than litigation. The most frequently employed forms of ADR are mediation and arbitration. In arbitration, a neutral party (or panel) hears both sides of a dispute and renders an oral or written decision, the parties to the dispute having decided in advance whether the decision will be binding or non-binding.

Mediation is an informal, non-confrontational participatory procedure to reach an equitable and positive solution. Mediation differs from arbitration in that the neutral

party remains impartial throughout the process, never imposes judgment but rather facilitates a voluntary resolution between the disputing parties. Both parties remain in control of the process, each has the option to stop at any time and to have independent counsel to protect his/her legal rights; and mediation does not prevent or preclude either party from using other dispute approaches, or judicial action. The mediator assists the parties in recognizing and identifying their respective interests and objectives which provides the basis for a jointly acceptable resolution. Disputes that are appropriate for the mediation process include:

- neighborhood disputes, (i.e., loud music, animal and parking problems, dangerous conditions of land, parental responsibilities for their childrens' actions, etc.);
- homeowner property disputes, (i.e., antenna and/or signal reception problems, aesthetics or dangerous conditions);
- recovery of money and property; and
- construction defects.

The key to successful mediation is that both parties know and accept that there is room to maneuver; if there isn't room or joint willingness to find an amicable resolution, mediation may not be the answer. Mediation cannot change lifelong patterns, attitudes and beliefs. Issues that cannot be mediated involve attitudes and beliefs (racism, sexism), unmanageable behavior, problems resulting from substance abuse, disputes involving violence or the potential for violence, and other matters involving a severe imbalance between the parties. Other complaints can be resolved by correcting the problem through formal action on the part of the association to enforce existing Covenants or rules and regulations. Formal passage and adoption of a new rule or regulation or clarifying the interpretation and application of association policy may resolve a situation for which there is no applicable rule. Lastly, the board may inform a complainant that a situation will not, or cannot be changed.

Because oral complaints are frequently made in the heat of anger or exasperation when the facts are usually exaggerated and/or inaccurate, many associations accept and recognize only written and signed complaints, which helps to eliminate those that are spurious, frivolous or invalid. A standard complaint form requiring detailed information and the relief sought by the complainant is helpful. The names of complainants should be kept confidential, particularly if the complaint involves another resident. Complaints are often directed to the president or the board of directors and referred to an appropriate committee for investigation and resolution. If an association is professionally managed, the property manager may be responsible for receiving and resolving complaints. If the manager or committee cannot satisfactorily resolve a complaint, it can be returned to the board of directors with a recommended resolution for board consideration and decision.

All written complaints received by an association should be recorded, and the attempts to resolve them noted in association records. The complainant should be kept informed of any actions taken to resolve the complaint and receive written notice of the



final resolution of the complaint. This type of procedure helps to insure that all complaints are promptly acted upon and dealt with in a consistent manner. It also provides board and committee members with background information on how similar problems were handled in the past, and assists an association in spotting recurring problems. It should also be noted that if a complaint alleges a violation of the association's declaration, then any lot owner, group of owners, the association, the Board of Directors, or the managing agent (on the association's behalf) may bring suit for damages or injunctive relief.

Pets and Animals; County Animal Control Ordinance - Pet restrictions under the Fairfax County Code, Zoning Ordinance and Animals and Fowl Ordinance, (more commonly known as the Animal Control Ordinance) are applicable to all citizens. It prohibits animals from running loose on public property, requires that dogs be leashed when off of their owner's property, prohibits animals from trespassing or damaging (soiling) another's property. The covenants and bylaws of an association may also impose additional pet restrictions on association residents.

The Animal Control Ordinance requires rabies vaccination and licenses for all dogs, and rabies vaccination for all cats 4 months of age and older. The ordinance requires that the Department of Animal Control or the Police Department be notified any time an animal bites a human. The animal must be quarantined for ten days for rabies observation at the County animal shelter or a licensed veterinary hospital. An animal may be quarantined at home if it is confined and isolated from all humans and animals, has a valid rabies certificate, and such home quarantine receives approval of the warden investigating the case. Vicious, dangerous and wild animals are prohibited as pets, and prohibits cruelty to any animal. The soiling (damaging) of private property with animal feces, including the common areas of an association, is an annoying and aggravating occurrence in residential areas. Some associations sell "pooper-scoopers" to animal owners and/or designate a specific area of the grounds for pet walking. Fairfax county Code, §41-2-6 "Animals causing insanitary conditions" (the Animal Control Ordinance, often referred to as the Pooper/Scooper Law), states:

*"It shall be unlawful for the owner of any animal or animals, to keep such animal or animals in such a manner as to cause insanitary conditions. The owner or custodian of any dog shall be responsible for the removal of excreta deposited by such dog on the property of another, including public areas."*

The Fairfax County Nuisance Noise Ordinance specifically prohibits owning or keeping any animal which frequently and habitually makes noise that is "plainly audible across property boundaries or through partitions common to (2) persons within a building" (such as an apartment or condominium). Enforcement of this ordinance is handled by the County Department of Animal Control (tel. (703) 830-3310) daily during normal duty hours (M-F, 7AM to 10PM; and S-S, 10AM to 8PM), and by the County Police Department during non-duty hours.

Enforcement of Animal Control Ordinance – County animal wardens are responsible for enforcing County ordinances dealing with animal control and cruelty to animals; police

officers may also enforce these ordinances. Virtually all provisions of the Fairfax County Code, Chapter 41 apply to both public and private property. An exception to this is the “Leash Law,” Section 41-2-4, that provides that: “[n]o dog shall run unrestricted in the County” and requires animal wardens to “seize and impound any dog found off the property of its owner when such dog is unrestricted.” Many homeowner and condominium associations prohibit dogs off-leash on the common grounds/elements, and would like the Animal Control Officers to enforce the ordinance on the common areas.

Since at least 1997, upon the advice of the Office of the County Attorney, the Department of Animal Control has enforced the leash law on common areas so long as the association provided proof of adopted rules and regulations allowing the enforcement of this ordinance. However, in order to give clear notice to both residents and Animal Control Officers that the leash law would be enforced on common grounds/elements, the Department of Animal Control also required homeowner and condominium associations to post a sign to that effect at the entrance(s) to the association property. The signage requirement is not imposed in the ordinance, but it has been the policy and practice of Animal Control to request such sign(s). Since 2001, the Department of Animal Control is part of the police department, and due to recent inquiry and review of the former policy and practice, the police department has concluded that the signage is not necessary. The Animal Control Division can enforce the ordinance on association property if the Animal Control Division has a written notice on file verifying that the association has adopted written rules and regulations allowing such enforcement. The Division must also have a map clearly showing the streets and areas included within the association’s property. Several sections of the Animal Control Ordinance of particular application to residential community associations are referenced in the Ordinance section of this manual. Contact the Department of Animal Control online at [www.fairfaxcounty.gov/ps/ac/homepage.htm](http://www.fairfaxcounty.gov/ps/ac/homepage.htm) or call (703) 830-3310.

Zoning Provisions and Restrictions – The Fairfax County Zoning Ordinance (Chapter 112 of the Fairfax County Code) also governs the keeping of animals in residential areas, prohibits livestock, limits the number of dogs that may be kept, and provides civil penalties for violation of these pet restrictions. Chronic offenders should be reported to Zoning Enforcement Branch at (703) 324-1300 or online at [www.fairfaxcounty.gov](http://www.fairfaxcounty.gov). When Zoning Enforcement confirms a violation, a notice is sent to the property owner. Each day the violation exists constitutes a separate offense and a civil violation summons may be issued. The property owner may pay the initial \$100 fine to the Fairfax County Office of Finance, or may appear in the General District Court to contest the violation. The same violation can be charged only once in a ten-day period with a maximum total fine of \$3,000. Continuing violations are subject to a fine of \$150.

Association Restrictions - Pet problems are among the most difficult to resolve, particularly in condominium and apartment-type communities where elevators, halls, lobbies, and open spaces are common grounds/elements jointly owned by all of the unit owners. It is important for an association to have its own comprehensive rules governing pets and pet owners because the association is solely responsible for enforcing covenants, bylaws, or rules and regulations. The Fairfax County Department of Animal Control (wardens) cannot enforce (private) association rules and regulations dealing with animals.

Pet rules should protect the health, safety and welfare of community residents and property rather than penalizing pet owners. Rules should clearly state what is expected of pet owners, and the consequences of their noncompliance. If the Covenants permit one “small” dog per unit and the board of directors interprets this to mean a dog weighing not more than 25 pounds, this standard should be clearly stated. Some associations require that all pets be registered with the association, restrict the size and number of pets, and provide that pet owners are responsible for any damage caused by their pet. Alleged pet rule violations should be submitted in writing with the complainant’s signature, and must be specific as to the pet owner’s name or address, the rule violated, and the date, time, and place of the violation. Such violations should be investigated promptly and resolution of the complaint should follow the association’s due process procedures. An assessment for any cleaning or repair costs should be imposed on the pet owner if so provided in the rules. Pet Peeves and What to Do About Them by the Community Associations Institute (see Appendix) provides additional information on resolving pet problems.

Absentee Owners and Tenants - Many homeowner and condominium associations have absentee owners who rent their single-family house, townhouse or condominium unit. The Virginia Condominium Act and the Virginia Property Owners Act are silent with regard to tenants and rental agreements. An association may require the property owner/member/landlords to provide a copy of their lease agreements to the association office, but the association has no legal standing or authority to impose, restrict, require or otherwise interfere with the rental agreement. There is no direct line of authority or enforcement between the association and tenant(s) residing in homes and units under the association’s control. Association directors and management need to know and understand the association’s relationship to such tenants.

The Virginia Residential Landlord and Tenant Act (VRLTA) defines the rights and responsibilities of tenants and landlords and governs their rental agreement in multi-unit apartment structures. However, the VRLTA was not intended to govern individual home rentals; it exempts landlords in Fairfax County from applicability of this Act in its entirety if they own and rent four or fewer rental units or properties. Thus, most single-family detached home, townhouse and condominium unit rentals are not covered by the VRLTA. Because of this exemption from the VRLTA, the lease agreement is the sole governing document, the “rules of the game.” Tenants in these situations have a legal occupancy of the premises by the authority of the lease agreement with the property owner.

Homeowner and condominium association authority and control is restricted to the common grounds/elements and the exterior of the private properties. The absentee owner, however, is still responsible for any assessments and/or other legal actions against the property as provided for in the association documents. If a rules or covenant violation occurs due to the tenant’s behavior, the association must issue a violation notice to the owner/landlord who is still responsible to the association for the property. If the violation is not corrected and is upheld through due process, any resulting penalty must be assessed

against the property, and it is up to the owner/landlord to collect any reimbursement from the tenant. If a rental agreement provides for the tenant's access to and use of association facilities (pool, tennis court, clubhouse), such access and use cannot be denied due to the tenant's violations unless the adopted rules and regulations provide for such denial of use for all members.

If the owner/landlord becomes more than 60 days delinquent in the payment of regular, special or violation assessments against the property, the suspension of privileges (as allowed by the respective state laws) can be enforced against the tenants even if their behavior has been exemplary. In cases of severe violations, the association cannot initiate eviction action or even force the owner to do so; the association is limited to assessments against the property. Although the association cannot mandate lease provisions, it can remind its owner/members of their continuing exposure to and responsibility for their tenant's behavior during the term of the lease. A prudent owner/landlord will provide in the lease agreement that the tenants must adhere to the covenants, conditions, restrictions, rules and regulations of the association and that they are responsible for reimbursement of any financial assessments during their tenancy.

Condominiums attract the great majority of absentee-owner rental-investors, which can cause several difficulties. When unit rentals exceed 30-40%, the condominium often takes on the visual attributes of a commercial apartment complex in which the tenant occupants have little or no attachment or vested financial interest in the property or in its resale value. Because of this threat to unit valuation, leaders in the secondary mortgage market have established a maximum rental level of about 40% of total units, above which they will not finance resale mortgages. Consequently, many condominium associations have attempted to restrict or prevent the rental of the privately owned units. Current unit owners, however, seem to have a legitimate claim that any such rental restriction violates their rights because they purchased for investment when there were no restrictions. Some condominiums with this conundrum have successfully amended the declaration to prohibit all rentals by future purchasers but still allowing current owners to continue renting under a "grandfathering" clause or exemption. This protects the current owner's interests; stops similar interests and expectations of future owners; eliminates the negative aspect of high-density rentals; and avoids probable litigation and costly settlements.

County Ordinances - While Fairfax County does not have an ordinance specifically governing the rental of dwelling units, it does have an ordinance related to occupancy restrictions, and the County enforces state housing standards that may have significance for both the association and owners leasing their homes. Chapter 112 (the Zoning Ordinance) of the Fairfax County Code, Section 2-502 "Limitation on the Occupancy of a Dwelling Unit," allows the following:

- occupancy of a dwelling unit by a family group of two unrelated adults and their own dependant children, for up to a total of six (6) children;
- roomers or boarders constitute a home occupation use for which a home occupation permit is required;

- a group of not more than four (4) persons not necessarily related by blood or marriage; however, occupancy by four (4) unrelated individuals must function as a single housekeeping unit;
- a group residential facility which may consist of up to 8 mentally ill, or mentally or developmentally retarded persons with resident staff;
- any group housekeeping unit of not more than ten (10) persons approved by the Board of Zoning Appeals in accordance with Section 8-300 of the Zoning Ordinance (Institutional Uses); and,
- one (1) or two (2) persons one of whom shall be elderly and/or disabled as defined in Section 8-918, and one (1) or both of whom own the dwelling unit, plus one (1) family, which may consist of one (1) person or two (2) or more persons related by blood or marriage, and with any number of natural children, foster children, step children or adopted children.

The Virginia Condominium Act permits the association to establish and enforce its own occupancy standards and limitations. Additionally, Volume II (Building Maintenance Code) of the Virginia Uniform Statewide Building Code prescribes a variety of occupancy, ventilation, sanitation, structural and other health/safety/welfare requirements for all residential structures, whether occupied by owner or tenant. Unless constructed many years ago, units in the association will likely comply with the current health standards. Information about enforcement of state health code standards can be obtained from the County Health Department online at <http://www.co.fairfax.va.us/service/hd/hdweb.htm>, or at (703) 246-2300. The Fairfax County Tenant-Landlord Commission and the Consumer Protection Division provide information to the public on tenant-landlord affairs. The Division also receives, investigates and attempts to resolve tenant landlord complaints through mediation, and members of the Tenant-Landlord Commission can be called upon to form an arbitration panel to settle the matter, if both sides agree to be bound by the panel's decision.

Association Rental Restrictions - Leased units often present problems for associations caused by both owners and renters. An absentee owner may be more inclined to become delinquent in paying association assessments when not directly enjoying the services provided by the association and it may be difficult (or impossible) for an association to collect delinquent assessments from absentee owners using its normal collection procedures. Tenants, on the other hand, may not have the same sense of responsibility to the community as an owner and may disregard association rules or fail to satisfactorily maintain the dwelling they rent. Some tenants may not even be aware of the existence of the association or its rules until they are contacted about an infraction.

Many condominium documents have detailed regulations regarding the leasing of units. The regulations may specify a minimum rental period (usually 12 months), require that a specific lease be used, and require that the tenant and lessor sign a statement that acknowledges that the tenant has been given a copy of the association documents and

rules and regulations. Most association documents, however, are silent concerning the leasing of units, stating only that an owner may delegate his/her right to the enjoyment of the common areas to a tenant. If an association has a problem with absentee owners or their tenants, it may choose to amend its bylaws to require that a copy of all leases must be filed with the association, and that:

- owners who lease their units must leave a forwarding address and telephone number with the association when they leave the community. This enables association contact concerning delinquent assessments, special assessments, proxy voting, and assures that the association will be able to reach them in case of any emergency;
- owners must submit the names of their tenants to the association, which enables it to correspond directly with the tenant and assists in the issuance of pool passes, the mailing of rule change notices, newsletters, and other items directly affecting a tenant's enjoyment of the community;
- all leases must contain a clause notifying the tenant of the obligation to abide by the covenants, bylaws, and rules and regulations. (An attorney can provide a standard clause for duplication and attachment to a standard lease).

Some associations encourage tenants to be an integral part of the community by providing the same welcome/orientation materials as provided to purchasers, by promoting tenant participation in association activities, and by appointing tenants to serve on association committees. These actions tend to minimize the problems often associated with rented units and can give tenants a greater sense of belonging. Some owners give tenants limited proxy rights, permitting them to vote for such things as the board of directors, while retaining the owner's vote for items which affect property rights, such as bylaw amendments or assessment increases. Owners must be certain that such permission is allowed by the governing documents.

Association Parking Restrictions - Due to limited parking spaces and increasing numbers of vehicles, many condominium and homeowner associations have adopted or are planning to adopt restrictions or prohibitions covering inoperative vehicles; those with expired decals, inspections, and/or registration; and over-sized SUVs and commercial vehicles. The application of an association's official parking policy depends upon the ownership of the parking location. State laws provide clear authority to condominium and homeowner associations to adopt a restrictive or prohibitive parking policy on the association's privately owned roads and common grounds. State law also prohibits parking any vehicle in an officially marked fire lane or within 15 feet of a fire hydrant on public or private property.

Section 82-5-7 of the Fairfax County Code prohibits parking any commercial vehicle on publicly owned roads and highways, even those within condominium and home-owner associations except when picking up/delivering passengers or merchandise, or during work or service at a residential location. This law permits one resident of each single family dwelling unit to park one licensed taxicab or limousine on such roads if

curbside parking is permitted for any vehicles. Association authority does not apply to publicly owned roads, thus an association cannot prohibit a resident member (or tenant) from parking one taxicab or limousine on a public road in front of his/her residence.

In the order of precedence regarding authorities (see page 37), an association's declaration is subservient to provisions of the County Code. Association covenants regarding the exterior use and appearance of the members' private properties (i.e., basketball hoops, house colors, and window trim, etc.) are enforceable because the County and state codes are silent on such matters, hence there is no conflict. However, a gray area exists where and when associations attempt to restrict the parking of commercial vehicles on members' privately owned driveways. A prohibitive parking policy resolution adopted under the authority of the association's declaration conflicts with the County Code. Section 10-102, item 16 of the Fairfax County Zoning Ordinance permits:

*“Parking of one (1) commercial vehicle per dwelling unit in an R district subject to the following limitations:*

*A. No solid waste collection vehicle, tractor and/or trailer of a tractor-trailer truck, dump truck, construction equipment, cement mixer truck, wrecker with a gross weight of 12000 pounds or more, or similar vehicles or equipment shall be parked in any R district.*

*B. Any commercial vehicle parked in an R district shall be owned and/or operated only by the occupant of the dwelling unit at which it is parked.”*

Further, Section 20-300 of the Fairfax County Zoning Ordinance provides the following definitions;

***Accessory Use:*** *Accessory uses as permitted by this Ordinance are subject to the provisions of Part 1 of Article 10. An accessory use is a use or building which:*

- 1. Is subordinate to and serves a principal use; and*
- 2. Is subordinate in purpose, area and extent to the principal use served; and*
- 3. Contributes primarily to the comfort and convenience of the occupants, business enterprise, or industrial use served; and*
- 4. Is generally located within the building housing the principal use served,*  
*except as qualified by the provisions of Sect. 10-203; and*

***“Commercial Vehicle:*** *Any vehicle with a rated carrying capacity of 1500 pounds (3/4 ton) or more, and any vehicle, regardless of capacity, which displays advertising lettered thereon or which is licensed as a ‘for hire’ vehicle. For the*

*purpose of this Ordinance, commercial vehicles shall not be deemed to include any vehicle operated by a public agency (except those vehicles set forth in Par. 16A of Sect. 10-102), farm vehicle or equipment located on property used for agricultural purposes, motor home, camping trailer, boat, boat trailer, horse trailer, or similar recreational equipment recognized as personal property and not for hire, emergency fuel oil delivery truck which has been approved by the County, and/or any public or private vehicle used exclusively for the transportation of persons to and from a school, place of religious worship, or activities related thereto.”*

The above provisions of the County Code are permissive of parking commercial vehicles on private residential property provided that the vehicle meets the definitions and limitations as stated. Application of association’s restrictive parking resolution to privately owned driveways would conflict with the higher precedent authority of the County Code, and thus be unenforceable. Associations considering such prohibition of parking commercial vehicles on the private properties within the association should seek legal counsel to avoid the possibility of a lawsuit.

Abandoned and/or inoperative (junk) motor vehicles, trailers and semitrailers are not permitted on residential property except in a fully enclosed garage. A license check through the police department allows an association to notify the owner that such vehicle must be removed. Inoperative means any motor vehicle, trailer or semitrailer which is not in operating condition, or which for a period of sixty (60) days or longer has been partially or totally disassembled by the removal of tires and wheels, the engine, or other essential parts required for operation of the vehicle. An abandoned vehicle is one that does not bear a current license plate, valid state inspection certificate, or current County decal, and has been in one location without being moved for at least 4 days. An association may request a duly authorized local official or law officer to issue a notice of parking violation to the registered owner of the offending vehicle.

Most community associations have rules concerning the parking, storage, home maintenance, repair, and guest/visitor parking of all vehicles, including cars, trucks, recreational campers and motor homes, boats, trailers, etc. on (privately owned) association property. These rules and regulations can not apply to public streets within the association’s boundaries, and it is the association’s responsibility to enforce, by violation notice and/or towing, its own parking restrictions on its own property. Normally, the police will not direct the removal of a vehicle from private grounds unless it is abandoned, unlawfully parked, causing a safety hazard, blocking an entrance or driveway, or otherwise in violation of a County ordinance. Parking in violation of an association’s parking rules is not unlawful or illegal.

Most condominiums and townhouse associations have very limited parking space and residents must sometimes park away from their homes. Complaints are common, and associations must study and discuss a variety of schemes and rules to identify and resolve the problems. Parking rules and restrictions is one subject that affects every



member, and every member has a comment or objection. It is advisable to survey the full membership or publicize a general meeting to foster member comments and input and discussion before the board finalizes rules by policy adoption. Some typical methods include:

- require vehicles to be registered with the association and to display current license tags, safety/emissions inspection stickers, and County decals at all times. This ensures that spaces are used only by members, and not for the storage of vehicles;
- assign one parking space as close as possible to each unit. The Police Department suggests that actual unit numbers or addresses not be painted on the pavement or curb because an empty space would indicate that an owner may not be home. Remote spaces may be assigned and/or used on a first-come, first-served basis;
- designate guest spaces, not to be used by residents during designated hours.

Parking rules on association property must comply with the applicable state laws and the governing documents, i.e., an association may not be able to assign reserved parking if the documents state that “...parking is on a first-come, first- served basis.” Similarly, assigning or reserving spaces on the association’s common grounds must also be in concert with governing documents (see Chapter 2; Hierarchy of Documents (Order of Precedence); pg. 27). In a 1998, a townhouse association reserved two parking spaces on the common grounds for member townhouses that lacked a private garage and driveway, but reserved no spaces for those that had garages and driveways. Despite the apparent attempt to fairly provide for all members to have convenient, nearby parking spaces, those who were denied reserved spaces sued the association for violating the declaration that reserved the common area for the use and enjoyment of *every* member of the association “on a uniform, non-preferential basis.” The Circuit Court granted the plaintiffs’ motion, which was appealed to the Virginia Supreme Court. The Supreme Court affirmed the Circuit Court decision noting that the parking policy “[did] not treat the owners on a uniform, non-preferential basis.”

Parking rules and regulations should be clearly written and documented in the association’s policy resolutions, and well publicized so that all owners are aware of the requirements, restrictions, and the consequences of non-compliance. Enforcement is best initiated by placing a violation notice on the vehicle and/or sending a copy to the owner. Such notification is not required by state or County law but is a reasonable action on the part of the association. The notice should state the specific violation, request that the vehicle be removed by a specific date, and describe further actions such as towing at the owner’s expense and/or an assessment of charges against the owner’s property. If the violation continues, state and County Codes authorize towing of the vehicle, provided that the property is conspicuously posted with warning signs. Many associations restrict or prohibit the parking of trucks, commercial vehicles, boats, and sometimes recreational vehicles and trailers/campers. A community association may have a separate facility for such vehicles or suggest alternative parking arrangements such as:

- vehicle and boat storage facilities are available at the Regional Park authority’s Pohick and Algonkian Park. Park headquarters at (703) 352-5900 or online at

[www.nvrpa.org](http://www.nvrpa.org) has information about parking, however, there may be a waiting list; and

- some moving and storage firms have facilities for boats, recreational vehicles, etc. An association might negotiate a group rate if such a facility is convenient to the community and there are sufficient vehicles to be stored.

Towing From Private Property: - The Code of Fairfax County, Section 82-5-32, provides for the towing and storage of vehicles unlawfully parked and/or parked in violation of association rules and regulations on association property. Any such vehicle may be towed to a storage site, provided that the following conditions are met:

- the owner (or agent) must erect and maintain permanent sign(s) conspicuously posted at all entrances to the property, that notify anyone driving a vehicle onto the property that parking restrictions (thereon) are enforced by towing. The sign(s) must state or reasonably indicate i) “private property,” ii) “reserved parking,” “permits required,” or other parking restriction message; iii) that a parking violation may result in towing; and iv) the words (entire phrase) “If towed, call (703) 691-2131” (or, in Herndon and Vienna, the appropriate police number).
- the association or its management agent must either expressly phone request the tow of a particular vehicle and sign a tow authorization slip (emphasis added), or have a contract or written agreement with a towing company.
- the tow operator must notify the Public Safety Communications Center to report the tow. (If a vehicle is removed from a location within the Towns of Herndon or Vienna, the towing operator must notify the police in that jurisdiction).

The towing of a private vehicle is an offensive, inconvenient and costly penalty for the owner, and should be considered and employed by the association only as a last resort. An association can expressly authorize the towing of a particular vehicle on a case-by-case basis. This method requires that the initial phone request be confirmed by the caller’s signature before the vehicle leaves the property. This can be inconvenient and time consuming for the manager or individual resident, and may lead to confrontation with the vehicle owner. Unless specifically limited in writing, a towing contract gives unilateral authority to the tow truck operator to decide if a vehicle is abandoned, trespassing, improperly parked, or otherwise in violation of the rules without any other authorization or concurrence from the association. Further, towing of the vehicle itself removes all evidence of the alleged parking violation and reduces the situation to an argumentative “he said/she said” confrontation between the owner and the tow operator.

To minimize these problems and encourage compliance, associations should publish the adopted parking rules and regulations, and regularly remind its members (via newsletter or flyer) that the rules are enforced by towing. Similarly, associations should include the applicable parking rules and regulations along with prudent limitations and

restrictions in the towing contract as guidance for the tow operators. Some associations restrict towing to certain hours, or to certain parking offenses, or require the tow operator to provide photo(s) of the parking offense, or otherwise limit the towing activity to the absolute minimum necessary. An association's parking rules and regulations can also be effectively enforced by "booting" which preserves the violation evidence without the inconvenience and cost of towing, or frequent damage to the vehicle. The County ordinance allows a maximum charge of \$25 for the removal of a boot. This charge accrues to the association if its management agent does the booting.

#### Antennas – Over-The-Air-Reception-Devices (OTARD) Rule – The

Telecommunications Act (the "Act") of 1996 was intended to promote the advancement of technology and competition among many new service providers, thereby allowing viewers the greatest possible access to the greatest variety of available programming at an affordable cost. In late 1996, the Federal Communications Commission (FCC) adopted the "Over-The-Air-Reception-Devices (OTARD) Rule." This rule addressed viewers' ability to receive video programming signals from: 1) television broadcast stations ("TVBS"), 2) direct broadcast satellites ("DBS"), and 3) multi-channel multipoint distribution (wireless cable) providers ("MMDS"). While allowing for some very limited controls and restrictions, notably for safety and historic preservation, the rule preempts all recorded covenants and restrictions that impair the installation, maintenance and use of antennas to receive video programming. The rule applies to all satellite dish antennas less than one meter (39.37") in diameter, to all broadcast TV antennas, and to antennas (one meter or less in diameter or diagonal measurement) for reception of wireless cable signals. The OTARD rule supercedes all restrictive covenants that:

- preclude, degrade, or interfere with the reception of an acceptable quality signal;
- unreasonably increase the cost of installation, maintenance or use of the antenna, and
- unreasonably delays or prevents the installation of the antenna.<sup>21</sup>

The OTARD rule was amended in January 1999 to apply to rental properties and homeowner and condominium associations where a tenant or resident has exclusive use of limited common elements such as a balcony or patio. It applies to all types of multiunit and manufactured (mobile) homes as well as to single family homes. Residents may install an antenna on a limited common element within their exclusive use as well as on property they own outright (i.e., a yard), but may be prohibited from installing an antenna on the common element roof of a multiunit building. A central antenna system installed on common elements by the association may allow restriction of the installation of individual video antennas, provided that:

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<sup>21</sup> Federal Communications Commission FACT SHEET, Over-the-Air Reception Devices Rule, February 2001, page. 1, (online at: <http://www.fcc.gov/mb/facts/otard.html>).

- the viewer receives the particular video programming service that he/she/they desire and could receive with an individual antenna (i.e., all DBS, TVBS and/or MMDS providers, not just any provider of the association's choice);
- the video reception from the central system (in the residence) is as good as or better than the quality received from an individual antenna;
- the costs associated with use of the central system are no greater than the costs of installation, maintenance and use of the individual's antenna; and
- the association's requirement to use the central system does not "unreasonably delay the viewer's ability to receive video programming."

With the installation of an acceptable central antenna system, an association can require the removal of individual antennas previously installed on limited common elements if the cost of removal and the value of the antenna are reimbursed to the individual.<sup>22</sup>

It is important to understand the technologies involved with the different antennas that are protected under the OTARD rule as well as the full intent, interpretation and application of the rule to prevent community conflict, or liability actions. For instance, broadcast signals can be received by "rabbit ears" or an attic-mounted antenna, however, a quality signal from such antennas can be degraded by the weather, a metal roof or siding, or interference from nearby appliances or transmitters (i.e., cordless phones). It is not acceptable for an association to say "...attic installation works well at one address in the association, therefore all broadcast antennas must be attic-installed." If a resident chooses to install an outside broadcast antenna for improved signal quality, it is the association's responsibility (and cost) to demonstrate that the signal quality is not improved (at that individual's property) before the application can be denied or restricted.

Satellite dish antennas must be installed outside the residence because they require an unobstructed, direct line-of-sight to receive a quality signal. If several locations on a specific property offer an unobstructed, quality signal, the association can require installation where it is least obtrusive as long as that location doesn't unreasonably increase the cost of installation, maintenance or use of the antenna. If the front yard is the only location on that property that receives a quality satellite signal and the owner chooses to proceed in that location, the installation cannot be restricted or prevented. It is also not acceptable to restrict antennas because "the whole community is served by a quality cable system." Because satellite does not carry most local programs, installation of both satellite dish and broadcast antenna (for local programming) cannot be restricted.

Association covenants or bylaws that simply prohibit antennas will certainly be overruled by the FCC regulations which take precedence over any conflicting restrictions; such covenants will become unlawful – and thus unenforceable.

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<sup>22</sup> Federal Communications Commission FACT SHEET, Over-the-Air Reception Devices Rule, February 2001, pg. 5 and 6 of 10 (online at: <http://www.fcc.gov/mb/facts/otard.html>).

Associations will not have to amend their covenants to comply with the FCC regulations because compliance is already mandatory.<sup>23</sup> However, restrictions that do not impair a viewer's ability to receive video signals remain enforceable. Community associations can still require a resident to apply for approval of the antenna installation as long as no unreasonable delay or cost is involved. Associations can still require compliance with the rules regarding method of installation, and may require screening, unobtrusive placement, painting, camouflage and other reasonable steps to reduce the visual impact on the community.

There are possibly as many different scenarios and "what ifs" as there are associations in Fairfax County, and disputes over interpretations and applications of the rule have already arisen. If a viewer/member and the condo or homeowner association disagree on the applicability of an antenna restriction, either party may file a Petition for Declaratory Ruling with the FCC or a lawsuit in a court of competent jurisdiction. All parties to such dispute are encouraged to resolve disputes prior to filing a petition or litigation in court. Associations and individuals may call the FCC (888-225-5322) for information about how the rule works or applies in a particular situation. The FCC maintains a Fact Sheet on its website concerning the OTARD rule and includes frequently asked questions and answers that may help to resolve disputes and misunderstandings about antennas and an association's restrictions. The FCC Media Bureau Internet website is online at: <http://www.fcc.gov.mb/>.

Law Enforcement Problems - Problems with traffic violations on private streets, trespassing and vandalism on common areas, and excessive noise are normal problems in community associations. The County Police Department is able to provide assistance in many such instances as described in general terms below. Information about specific problems or situations can be obtained from the Police Department. Each County police station has a Crime Prevention Officer who will work with an association to reduce traffic or crime problems. The Police suggest that associations designate a representative to contact the Police Department when problems occur on/in the common areas and facilities. Call your closest district police station for further information. (See "Neighborhood Watch" under Voluntary Programs in the next section of this manual).

The Police Department will patrol private streets. An association should contact the appropriate district police station to discuss methods of alleviating any ongoing problems. The Police do not routinely enforce traffic laws on private property (e.g., stop sign violations, speeding, etc.). State law does not require a motor vehicle accident investigation by the police if property damage (only) occurs on privately owned or controlled (association) property. An officer may respond to an accident to ensure the exchange of information between the parties involved, but the response may be limited (or ended) by other priority calls occurring at the same time. Accidents involving major violations such as reckless or drunk driving, hit-and-run, personal injury, or death will be investigated by the police, regardless of location.

The Police Department will respond to trespassing calls on commonly owned or controlled property if the area is posted with "No Trespassing" signs. If the trespasser is

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<sup>23</sup> "Channel Surfing" by P. Michael Nagle; Common Ground, May/June 1996; pg. 33

still present when the officer arrives, the property owner or association representative must, in the officer's presence, ask the person to leave. If the person does not leave, the officer can make an arrest. In cases of repeated trespassing by the same person, association members can petition the court to summon the individual to answer a charge of trespassing (Section 5-4-1 of the County Code). If the trespasser is no longer present when the police arrive, the person complaining must swear out a warrant regarding the violation. Under Virginia law, arrests cannot be made for misdemeanor violations unless the arresting officer has witnessed the violation or unless someone who has witnessed the incident has sworn out a violation warrant. An association may want to contact its attorney prior to swearing out any such warrant.

The Police Department will respond to complaints about noise disturbances under the County's Nuisance Noise Ordinance (Section 108-5-2 of the County Code). Typically this involves loud noises between the hours of 11 p.m. and 7 a.m., animals which are habitually noisy (such as a dog that constantly barks), or other noisy household activities. Noise problems are particularly troublesome in garden-type condominiums and townhouses because of the common walls or floors. Annoying noise sources can include TV's, stereo music, vacuums, dishwashers, home exercise equipment, pets, and movement of furniture or people on bare floors. The board of directors or management should remind residents that floors and walls seem "thinner" at night when ambient noise levels fall to a minimum. Also, one person's interpretation of "loud" may be quite different from that of another. Variables such as age, hearing ability, personalities, habits and attitudes are always at play in complaint situations. Upon arrival at a noise complaint location, an officer will request that the noise be abated. An arrest will be made or a warrant issued only if the police officer's request is not heeded. If the noise is no longer being made when the officer arrives, the Police Department will take no action unless two unrelated persons swear out a warrant for the alleged noise disturbance.

Special Events Planning<sup>24</sup> - A special event is an activity for which permits are required and where a significant number of persons participate in the activity. Examples are fundraisers for the association or other cause or charity; a parade, bike or foot race, or block party; a community garage or yard sale; a soapbox or bathtub derby; crafts or hobby shows, etc. Specific information and special conditions pertaining to special events are listed below by location or type of event. Some elements or special conditions listed may not apply to your specific event, however, these guidelines can help make planning the event easier, and the "big day" safer and more enjoyable for all who participate. Some events and activities require certain types of zoning permits or other licenses, such as a Temporary Special Permit, an Exhibitor's Permit for animals, or a Banquet License for alcohol. While some permits take less than 3 weeks to process, others require a public hearing that takes considerably longer. If your association is planning a special event, contact the Department of Planning and Zoning, Planning Division at (703) 324-1325 or online at [http://www.fairfaxcounty.gov/ocp/zad\\_homepage.htm](http://www.fairfaxcounty.gov/ocp/zad_homepage.htm).

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<sup>24</sup> Michael LoMonaco, Fairfax County Citizen Guidelines for Special Event Planning, Fairfax County Police Department, Fairfax, VA, 1994; with assistance from Ronald Phillips, Department of Emergency Services, and John Fee, Federation of Citizens Associations; condensed and modified for this publication.

#### Locations and Types of Special Events:

- **Public Schools** – Meetings or special events held at a Fairfax County Public School require an “Application for Community Use of School Facilities and Grounds” to be filed with the principal of the particular school at least 15 days before the event. Charges based upon the room size needed and how long it will be used must be paid at least 10 working days before the event. Unless the requirement is waived, an Internal Revenue Service tax exemption letter and proof of liability insurance coverage may be required. Alcohol and smoking are forbidden on school grounds at all times, and no tents are permitted. Call the Community Use Section of the County School Board at (703) 246-3873 for a fee schedule and other information. Fairfax County Community and Recreation Services has scheduling authority for athletic fields and gyms on school property. To reserve time and use of fields, contact Facility Scheduling at: <http://www.fairfaxcounty.gov/rec/indexffxco.htm> or call (703) 324-5533.
- **Park Facilities** – If you desire to hold a community event at a Fairfax County Park Authority facility for the gathering of 75 or more individuals, you will need to complete a “Public Gathering Permit”, which is required to reserve any picnic area or pavilion. The fees for reserving picnic areas and pavilions vary. For permit packages and information, contact the Fairfax County Park Authority at (703) 324-8700, or at <http://www.fairfaxcounty.gov/parks/parks.htm>. Fairfax County Community and Recreation Services has scheduling authority for athletic fields on parklands. To reserve use of fields, contact Facility Scheduling at (703) 324-5533 or at: <http://www.fairfaxcounty.gov/rec/indexffxco.htm>. Bull Run Regional Park, Pohick Regional Park, the W&OD Trail, golf courses, boating, and other park facilities are run by the Northern Virginia Regional Park Authority (NVRPA). Contact NVRPA at (703) 352-5900 or at [www.nvrpa.org](http://www.nvrpa.org) for use rates and regulations regarding group events. For information regarding Virginia State Parks, call (804) 786-1712, or at: <http://www.dcr.state.va.us/parks/index.htm>; and for National Park Service (NPS) information, call (202) 619-7222, or online at <http://www.nps.gov>.
- **Road Uses and Closings; Parades, Garage Sales, Block Parties, Foot or Bicycle Street Racing** – Many communities hold special events such as neighborhood parties, garage sales and parades within the subdivision. Because permits may be required from several agencies, event planners should prepare a fact sheet for the event with the name of the organization and contact person’s name, address and phone number. Also describe what the event will be, the event date and hours, the location, required equipment, funds, parking, maps, and clean-up plans. Make photocopies of documents such as the IRS tax exemption letter and insurance binder to facilitate the approval process and help obtain permit fee waivers.



Some associations sponsor distance foot races or bicycle road and trail races elsewhere in the County or the state. VDOT is responsible for nearly all primary and secondary roads in Fairfax County, however, the Police and Fire and Rescue Departments can offer safety tips and advice. VDOT requires a “Road Use Permit” to be submitted and approved in advance of any activity on a state road. The permit is available at local police district stations or from the VDOT Northern Virginia District Office at 14685 Avion Parkway, Chantilly, Virginia 20151-1104 (tel. (703) 383-8368 or (703) 383-2888). The VDOT Internet homepage at [www.virginiadot.org](http://www.virginiadot.org) contains a “Bicycling” link to many sponsored events and other cycling information, however, the “Road Use Permit” is not available online.

- **County Government Center** – Local nonprofit groups are encouraged to use the facilities and grounds of the County Government Center for educational, cultural, and informational purposes. The County Government Center features a 375-seat Board Auditorium, a 10-room Conference Center (total capacity 300), an interior Public Forum, and hallway atriums that are well-suited for displays, craft shows, and bake sales. There are 1,500 outside parking spaces. Reservations for the County Government Center facilities on a “first reserved” basis are made by calling the Building Management Office (703) 324-2055 from 8 a.m. to 4:30 p.m. weekdays. Applications must be submitted at least 10 days prior to the proposed activity, and sponsors must complete a work order describing the room setup and any requested equipment. Catering is available from the cafeteria (703) 324-2979, but alcoholic beverages are prohibited unless approved by the County Executive.
- **Music, Arts and Crafts Shows** – Promoters sponsoring special events such as rock concerts, craft shows, and hobby fairs for large audiences must acquire a Business Professional and Occupational License and submit a roster of expected participants. The Fairfax County Code requires the promoter of such shows or individual peddlers to apply in person to obtain a license from the Consumer Protection Division (CPD). Associations sponsoring such type of special event should call CPD (703) 222-8435 to determine if a peddlers license is required for their show or event.

Special Considerations: The following special considerations are a necessary part of the event planning as they may be applicable and/or required depending upon the size, nature and location of the special event:

- **Police** – If large numbers of people or traffic problems are anticipated, notify the District Police Station that serves the area where the event will be held. If you wish to hire off-duty Fairfax County Police Officers for the event, a form for this purpose is available at the District Station. Off-duty officers are generally prohibited from working events where alcohol will be served.



- **Health** – Contact the Health Department at (703) 246-2444 or online at: <http://www.fairfaxcounty.gov/service/hd/hdweb.htm> if food vendors are planned; at (703) 246-2541 if open fires are needed; and at (703) 246-2201 if sanitation and potable water are planned. If the event is away from public toilets or association facilities, plan on at least one portable toilet per 100 people to be at the event. On-site inspections by the Health Department may be required.
- **Fire and Rescue** – Events that may draw significant numbers of people should be coordinated with the Fairfax County Fire and Rescue Inspections Division at (703) 246-4849, or at <http://www.fairfaxcounty.gov/ps/FR/homepage.htm>. Contact the Fire and Rescue EMS Operations at (703) 246-2549 to request assistance with medical concerns.
- **Tents** – Tents are temporary structures requiring a building permit (\$56 fee) if they are greater than 120 square feet (11' x 11'). Call the Department of Public works and Environmental Services (DPWES) Permit Application Center at (703) 222-0801, or at <http://www.fairfaxcounty.gov/dpwes/construction/permits.htm>. Tents are not permitted on school grounds. Event sponsors must submit an application and an affidavit as to the tent material's combustibility and evidence that adequate sanitary facilities are available. For tents greater than 250 square feet, the Division of Design Review (703) 324-1720 must determine if a site plan is required. Tents (and air support structures) covering more than 900 square feet and intended for more than 50 people also require a separate tent permit from the Fire Prevention Division of the Fire and Rescue Department (703) 246-4800.
- **Temporary Electric Power** – Electric permits are necessary for temporary electric service from existing power service and when using a portable generator as a central power supply. Contact the Permit Application Center (703) 222-0801, or online at <http://www.fairfaxcounty.gov/dpwes/construction/permits.htm> for application requirements and a fee schedule.
- **Amusement Rides** – An Amusement Device Permit is required for commercial amusement rides that may be contracted for an association's special event. Permit fees range from \$15 to \$45 depending on the type of ride and must be submitted with the completed application. Applications are available from DPWES at (703) 222-0801 or at: <http://www.fairfaxcounty.gov/dpwes/construction/permits.htm>.
- **Animal Exhibits** – The owners or operators of animals to be used at a special event (e.g., pony rides), are required to contact the Department of Animal Control (703) 830-3310 or at <http://www.fairfaxcounty.gov/ps/ac/homepage.htm> to schedule an inspection of the animals prior to the event. If the owners or operators of animals do not have their principal place of business in Fairfax County, an Exhibitor's Permit is required. A permit application is available from and must be submitted with a \$50 permit fee to the Fairfax County Department of Animal Control. The animals will be inspected and the permit issued on the day of the event.

- **License** – Vendors who are engaged in business in Fairfax County and who meet the requirements of the Fairfax County Code must acquire a Business Professional and Occupational License (BPOL) from the Department of Tax Administration at (703) 222-8234, or at <http://www.fairfaxcounty.gov/dta/homepage.htm>. Promoters sponsoring special events such as rock concerts or craft fairs for large audiences must also acquire a Business Professional and Occupational License and submit a roster of expected participants. Circuses, carnivals, and other similar temporary activities must acquire a County Revenue license, also from the Fairfax County Department of Tax Administration.
- **Beer, Wine, and Spirits** – If you plan to sell or serve beer, wine, or mixed drinks at a community event, you must file “Instructions and Application for Banquet License,” obtained from the Virginia Department of Alcohol Beverage Control at (804) 213-4400, or at <http://www.abc.state.va.us/enforce/forms/enfforms.htm>. This permit, which has a processing fee and license tax of \$45 for a single day (\$30 for additional days), is issued to nonprofit corporations or associations holding athletic, charitable, civic, educational, political, or religious events, the proceeds of which must be donated to charitable organizations and not for personal monetary gain. Application processing normally takes seven business days. Off-duty Fairfax County Police Officers are generally prohibited from working at such events. (Guidelines for regulating safe consumption at special events are available from ABC and some national breweries). Alcoholic beverages are prohibited at outdoor park facilities, at Regional Park Authority facilities, and on all school properties.
- **Public Roads** – Although the Virginia Department of Transportation (VDOT) is responsible for most roads in Fairfax County, persons who want authorization for road use must submit an “Application for Road Use” to Fairfax County Police 30 calendar days prior to the event. The form should be taken to the Traffic Division or the District Station in the event area. When the Police Department completes the form, the applicant must submit it, at least 12 calendar days prior to the event, to VDOT Permit Section, 3565 Chain Bridge Road, (703) 359-1271, or at [http://virginiadot.org/quick/nova\\_quick.asp](http://virginiadot.org/quick/nova_quick.asp). The application should include a map of the roads or areas to be traveled or used.

Special Events Clearinghouse: The Fairfax County Office of Public Affairs maintains a clearinghouse to help all organizations coordinate the scheduling of all prospective events that could draw from the same audience or conflict in other ways. Sponsors of major events and activities should contact the Office of Public Affairs Citizens Assistance Desk at (703) 324-3185, TDD (703) 324-2935 to list the event or to learn of other scheduled activities on or about a specific date. Please provide a contact person’s name and phone number together with your association or organization name when listing your planned activity, and specify that the information is for the major events clearinghouse.

## **SPECIAL EVENT PLANNING**

### **TELEPHONE CONTACTS**

#### **SAFETY**

Emergency Medical Services (Fire and Rescue Department) .....	(703) 246-2549
Food Vendors (Health Department).....	(703) 246-2444
Inspections (Fire and Rescue Department) .....	(703) 246-4849
Open Fires (Health Department).....	(703) 246-2541
Sanitation/Water Supply (Health Department).....	(703) 246-2201
Traffic (Police Department, Traffic Division) .....	(703) 280-0550

#### **FACILITY SCHEDULING**

County Government Center, Building Management Office .....	(703) 324-2055
County Park Facilities (Park Authority) .....	(703) 324-8700
Northern Virginia Park Authority Facilities .....	(703) 352-5900
Playing Fields and School Gymnasiums, Department of Community and Recreation Services.....	(703) 324-5533
Public Schools, Community Use Section .....	(703) 246-3873

#### **PERMITS and LICENSES**

Amusement Rides, DPWES Permit Branch .....	(703) 324-1559
Animal Exhibits; Animal Control Division .....	(703) 830-3310
Beer, Wine, Spirits; Virginia Department of ABC .....	(703) 518-8090
Business Professional and Occupation License; Circuses, Carnivals and Similar Activities; Arts and Craft Shows, Music/Rock Concerts; Department of Tax Administration.....	(703) 222-8234
Department of Cable Communications and Consumer Protection .....	(703) 222-8435
Noise, Waivers; Zoning Enforcement Branch .....	(703) 324-1300
Road-Use; VDOT, Permit Branch .....	(703) 359-1271
Temporary Zoning; Zoning, Permit Branch .....	(703) 324-1359
Temporary Electric Power; DPWES, Permit Branch .....	(703) 222-0801
Tents; DPWES, Permit Branch.....	(703) 222-0801
Fire and Rescue Department, Fire Prevention Division .....	(703) 246-4800

## **Volunteer Programs:**

In addition to requirements of the governing documents and bylaws, associations can focus human resources of the community on programs, events, and activities that support and enhance the social and physical environment of the community. Support, participation, and promotion of these activities fosters a sense of community among the residents, and is in harmony and in keeping with the overall purpose of the association. Voluntary involvement can originate with individual residents, the association directors, committees, or from outside organizations. In some instances, program planning, training and organization already exists in the sponsor organization and needs only an invitation from the community association. The following are a few examples:

- Neighborhood Watch – Neighborhood watch is a proven, highly successful, community crime prevention program that functions through the cooperative involvement of police and citizens. The objective of “Neighborhood Watch” is to organize and train residents to be alert to potential crimes, unusual activities, and to suspicious persons and vehicles in their neighborhoods. The program is designed to prevent, detect and report crimes, with enforcement action left to the Police Department. Locally, the Crime Prevention Division of the Fairfax County Police Department sponsors this program.

Population growth and its corresponding commercial and residential expansions are often accompanied by an increased potential for crime. New neighborhoods and developments with an influx of unacquainted and diverse residents are particularly vulnerable to theft, burglary, assault, property damage, and other criminal activities. At the same time, police manpower and economic resources are increasingly stretched thin. The adage that “an ounce of prevention is worth a pound of cure” was never more true or applicable than in this time and social environment. Support and promotion of this program is the “ounce of prevention” that can directly involve residents through participation. Alertness, observation and reporting by residents enables the police to provide prompt response and investigation of a suspicious incident, often before a crime is committed. This approach increases neighborhood security through awareness of crime, encourages neighborliness, creates involvement and interaction among residents, serves as a warning to potential criminals, and it helps to prevent crime or problems from arising within association boundaries. Security and property protection accrue to the residents, their homes and property, and to Condo/HOA facilities. A well-established and effective crime prevention program will help to maintain property values. The following “Neighborhood Watch” programs can be implemented individually or collectively, depending upon the characteristics, resources, and needs of each community:

- Passive Observation – constant lookout by all residents for suspicious or unusual activities or persons in the neighborhood, and awareness of the program and reporting procedures.
- Window Watch – A scheduled, routine activity where reliable residents who may be house-bound for reasons of health, age, disability, parenthood, or a care-giver in the home observe exterior areas every 15 to 20 minutes

- Walking Patrols – Active scheduled walking patrols by pairs (only) of residents, within a several block area looking for suspicious activities, persons or conditions. Members should contact the police by radio or telephone.
- Mobile Patrols – Normally used during high crime hours or periods in larger communities and where homes are spaced apart making window watch or foot patrols impractical. Vehicle decals can make patrol activity highly visible.

Additional information regarding the police community services is available at [http://www.fairfaxcounty.gov/ps/police/cmtty\\_pol.htm](http://www.fairfaxcounty.gov/ps/police/cmtty_pol.htm). For further information about the “Neighborhood Watch” program, contact the Crime Prevention Division of the Fairfax County Police District Station serving the area where your condominium or homeowners association is located.

- Adopt-A-Park / Adopt-A-Field – These volunteer programs are a cooperative venture between the Fairfax County Park Authority (FCPA) and interested individuals and organizations that assume limited maintenance responsibility for designated park areas or athletic fields. These programs offer a unique opportunity for a residential association to help preserve and maintain the environment and recreation facilities near the community. Stream valleys are greenways, environmental corridors, stormwater floodplains, buffers from nearby roads and/or other developments, natural wildlife habitat, and linear parks for aesthetic and recreational enjoyment of all residents.

While some parcels in these stream valleys are association open space, significant portions are owned by the FCPA as parkland and include much of the Countywide Trail system. Many other parks, play fields, and recreation facilities adjacent to residential developments provide safe pedestrian access for the benefit of the association members. Maintenance and preservation of these lands and facilities are critically important for the safety and enjoyment of all users, regardless of ownership. This preservation includes informing residents of rules and regulations prohibiting environmentally harmful activities such as dumping yard wastes, cutting firewood, removal of vegetation or soil, or changing the course of streams and surface drainage. The Park Authority created the Adopt-A-Park and Adopt-A-Field programs to meet maintenance needs and a strong volunteer desire by many residents and organizations. In reality, these programs are maintenance agreements that specify and limit the work to be performed by the participant(s). The Park Authority’s professional staff is available to provide information, expertise, and supervision if needed. Further information about the Adopt-A-Park and Adopt-A-Field programs is available from the Park Authority Park Operations Division at (703) 324-8700, or online at <http://www.fairfaxcounty.gov/parks/volunteer.htm>.

- Fairfax Releaf - Fairfax ReLeaf is a nonprofit organization affiliated with the American Forestry Association and is dedicated to promote the planting of trees in Fairfax County and surrounding areas. This effort depends upon the voluntary support and participation of state and local organizations and other interested groups. The primary mission of Fairfax ReLeaf is to maintain the county’s forest cover at or above

that which existed in 1990 by replacing aged, diseased, and cleared trees, and by promoting proper tree care and maintenance through volunteer activities.

Fairfax forests play a vital environmental role by providing wildlife habitat, watershed protection, climate modification, noise abatement, visual buffers and dividers between developments, improved air quality, shade for energy conservation, recreation qualities, and increased land values. Many developments involve extensive clearing of forested land during construction, thereby depleting the forest cover. This rapid decline in forest cover creates a critical need for replanting throughout our communities. While landscape planting is a typical part of development plans, it does not begin to replace the lost vegetation. Studies show that only one tree is replaced for every four trees removed in urban and suburban developments. New trees require many years of growth to provide the benefits of maturity. Association “Open space” areas are often sub- parcels of cleared land that are too small for active play fields or other use, yet require maintenance at association expense. The planting of trees (seedlings) in these areas will help to restore lost tree cover, and eventually provide the aesthetic and environmental benefits of forested land while reducing or eliminating maintenance expenses.

A residential association can coordinate the interests and human resources of the community by promoting a tree planting program for community open space parcels. In most cases, Fairfax ReLeaf provides the tree seedlings, expertise, and supervision, while the association provides the area to be planted, the manpower, and continuing care of the seedlings. For more information, contact the Fairfax ReLeaf office at (703) 324-1409, or at <http://www.fairfaxcounty.gov/DPWES/environmental/ecp.htm>.

- Adopt-A-Highway – “Adopt-A-Highway” is a national award winning litter and trash removal program administered by the local residency offices of the Virginia Department of transportation (VDOT). Through this program, interested groups and organizations are safety-trained and permitted to conduct trash/litter removal from the roadsides of a state maintained highway. In most cases, an organization is responsible for a two mile length of roadway roadsides only). Training, scheduling and collection activity are coordinated through VDOT which supplies safety vests, warning signs, trash bags, and collection pickup if necessary. VDOT also provides and installs permanent identity signs on the roadside naming the organization and the Adopt-A- Highway program as being responsible for the trash and litter control.

The first impression of a residential development is usually as seen from the perimeter road or highway. Many developments have entranceways or gates into the development to create a favorable impression and identity for residents and visitors. This impression and identity can be jeopardized if the perimeter roadsides are trashy, littered and unkempt. The Adopt-A-Highway program is an excellent way for residents to promote community beautification by extending their maintenance concerns to the exterior roadsides of the community. The participants are required to schedule at least four collection activities per year, whereas state maintenance might collect litter only once each year. No mowing or other maintenance is authorized or permitted by VDOT.

Further information about the program is available by contacting the Adopt-A-Highway Coordinator, VDOT-Fairfax Residency office at (703) 359-1271, or online at <http://www.virginiadot.org/infoservice/prog-aah-faqs.asp> .

- Gypsy Moth Suppression: - Fairfax County participates in the Virginia Cooperative Gypsy Moth Suppression Program, which is supported by federal and state funding. Gypsy Moths feed on the leaves of hardwood trees, and in large numbers can defoliate and kill major stands of trees. This, in turn, reduces property values. Gypsy Moth populations throughout Fairfax County are on the rise. The 1995 aerial treatment in the County covered approximately 45,000 acres, with a maximum ground treatment of some 200 additional acres. The suppression program ensures that all known Gypsy Moth infestations of 250+ egg masses per acre will be treated. The summertime treatment program minimizes tree defoliation and mortality, provides for maximum infestation suppression the following spring, and should meet all citizens' needs regarding Gypsy Moth suppression.

The aerial treatment program is voluntary. Citizens may choose not to take part in the aerial program and a 200-foot buffer zone will be created around the non-participants' property. This buffer zone will be treated with ground spray. Citizens living in an area scheduled for aerial treatment are notified of the treatment schedule. Maps of the spray areas are displayed at government centers and County libraries, and public meetings provide additional information and answer citizens' questions. The County continues to offer public education and technical assistance to communities wishing to be more active in fighting the infestation and has purchased 100,000 pieces of burlap banding for citizens to wrap around tree trunks on their properties. Banding interrupts the life cycle of the Gypsy Moth by preventing the larvae from reaching the tree foliage. Call the Department of Public Works and Environmental Services Gypsy Moth Office at (703) 324-5304, or online at <http://www.fairfaxcounty.gov/dpwes/environmental/pests.htm> .

- Adopt-A-Stream - Fairfax County residents are fortunate in having many scenic streams available for passive recreational use and enjoyment. These streams and their natural floodplains are protected from the encroachment of adjacent developments by County ordinances, zoning regulations, and adopted policies. In many locations, maintained countywide trails provide easy access into and through these natural, scenic, linear parks and environmental quality corridors. Many County residents routinely enjoy active and passive recreational pursuits along these stream valley trails. Unfortunately, the health of these streams and environmental corridors cannot be assured solely by ordinances, zoning regulations, and adopted policies. Streams are among the first collection points of surface and groundwater runoff from very large watershed areas that include roads and parking areas, residential and commercial developments, trash dumps, landfills, and other sources of pollution. While some pollution within the watersheds can be stopped at or near its source by implementing County construction standards, other thoughtless or inadvertent, and occasionally intentional acts pollute the land, the streams, the bays and the oceans. The health of the stream valley environment can directly affect the health of its users.

Many problems such as sewer overflow and failing septic systems are obvious. However, less obvious situations such as over-fertilization of yards, gardens and farms; disposal of waste oil, lubricants, chemicals and cleaners; illegal dumping of trash and residential or commercial waste materials; and illegal discarding of hazardous wastes and chemicals can cause unknown long term contamination problems. These contaminants are a direct threat not only to the human population, but to the wildlife and vegetation that make the environmental quality corridors a significant benefit to the visual and economic values of the County land base. In 1987, the Fairfax County Environmental Quality Advisory Council (EQAC) tasked the Health Department to alert the public to potential health hazards associated with the recreational use of stream waters and to adopt and implement a standard operating procedure for determining the source of contaminants found in streams through existing surveillance programs. The objectives of this task are four-fold:

- increase public awareness of stream health hazards through citizen involvement and participation;
- develop information for continuing public education to stream health hazards;
- provide a central contact point for stream complaints, questions and comments; and,
- increase stream surveillance for pollution without increasing existing staff.

The Adopt-A-Stream awareness program, developed by the Environmental Services Section of the County Health Department and introduced to residents in 1989, is one result of the EQAC challenge. Through membership application in this program, individuals or groups can adopt a section of a stream for observation, monitoring, reporting, and clean-up activities. The Health Department provides printed technical information, detailed maps, a newsletter, video and speaker programs and additional information and assistance to help members care for “their stream”, and to investigate pollution and contamination reports to determine the source and cause of the pollution.

The results of the County Adopt-A-Stream program have been substantial. Many individuals and groups including Boy and Girl Scouts, civic organizations, homeowner associations, high school and elementary science classes, and other participants have been instrumental in reporting pollution problems and cleaning many hundreds of pounds of trash and debris from their adopted streams. Identification of this program as the contact point for stream complaints has reduced the amount of time spent reporting problems. Stream pollution investigations by the Health Department have increased, resulting in quicker response, identification of underground spills, and court action when needed. Much of this would not take place without citizen involvement in reporting and identifying stream problems. The significant benefits of the Adopt-A-Stream program are summarized as follows:

- increased public awareness of health hazards of open bodies of water;



- development of a standard procedure to determine sources of contamination;
- citizen participation in the protection of the environment and natural resources;
- provision of extra surveillance for possible and actual pollution incidents; and,
- centralized contact point for citizen complaints, questions and referrals.

This program can coordinate with the Park Authority's stream valley programs, and homeowner association involvement can make a substantial impact on community values, environmental quality, and land maintenance. For more about the Adopt-A-Stream Program, contact the Health Department, Environmental Services Section online at <http://www.fairfaxcounty.gov/service/hd/resourcewater.htm> or call (703) 246-2201.

- NVSWCD "Earth Team" - The Northern Virginia Soil and Water Conservation District (NVSWCD) promotes the wise use and conservation of soil and water resources and sound environmental policies for Fairfax County, and offers technical expertise, educational programs, and community outreach in the soil and water conservation arena. NVSWCD has numerous volunteer opportunities for individuals and groups through its "Earth Team" program. The Earth Team is a volunteer arm of the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS). Members of the Earth Team work in partnership with NRCS and Soil and Water Conservation Districts to conduct both individual and group projects. By working together, NRCS, NVSWCD, individuals and groups can expand conservation efforts and better serve the community. As a member of the Earth Team, citizens become involved in conservation activities by:
  - reporting and preventing erosion and reducing non-point source pollution;
  - conserving water and helping to clear streams of debris, trash and blockages;
  - enhancing wildlife habitats and pride in our County's natural resource heritage.

Members of the Earth Team may volunteer for clerical, public information, technical, education and outreach positions. Possible Earth Team projects in and near residential association communities include stream clean-up, tree planting, teaching youth group and school programs about watersheds and water quality, taking photographs and writing articles about conservation issues, organizing conservation tours and exhibits, and general office support. Contact the Northern Virginia Soil and Water Conservation District at (703) 324-1460, or at <http://www.fairfaxcounty.gov/nvswcd/default.htm>.